A. Until Excessive Costs Are Stripped Out of Access Charges, Recovery of Those Costs Must Be Competitively Neutral.

The most significant factor affecting the level of switched access prices is the recovery of costs in excess of direct cost.[33] Currently, the Commission does not require the LECs to employ uniform or consistent overhead loadings in pricing either existing or new switched access options. Indeed, with respect to new services, a LEC "may, but does not have to, add a level of overhead costs to the direct costs to support the proposed price," as long as it justifies any deviations from its methodology for assigning overhead loadings.[34]

As a result -- and as CompTel has amply demonstrated in previous filings with the Commission and other agencies -- overhead loadings for switched access vary wildly in relation to perceived competitive threats, and bear no relation to underlying service costs. That is, access offerings for which competition is tenable (e.g., DS3 direct-trunked transport) bear a far lower amount of overhead than offerings for which competition does not exist (e.g., DS1, tandem-switched transport), even though these

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[33] The Commission has used the term "overhead loading" to refer to "the amount by which the direct costs of a service are increased in order to recover overhead costs, which are common costs not directly attributable to a particular service." Local Exchange Carriers' Rates, Terms, and Conditions for Expanded interconnection Through Virtual Collocation for Special Access and Switched Transport, 10 FCC Rcd 6375, 6376 n. 4 (1995) ("Virtual Collocation Overhead Prescription Order").

[34] Second Further Notice at ¶ 41.

offerings are provisioned over exactly the same physical facilities. Consequently, access pricing unreasonably favors the largest incumbent IXCs.

In contrast, in markets where a LEC provides services that are used by its competitors, the Commission has limited the LECs' flexibility in allocating overhead in order to avoid adverse competitive repercussions. For example, the LECs must provide expanded interconnection offerings at rates derived from direct costs and a reasonable allocation of overhead, and may not include greater than a uniform overhead loading unless they can justify doing so.[35] Notwithstanding this direction, the LECs' initial expanded interconnection tariffs "strategically assign[ed] high overhead loadings to deter efficient entry by interconnectors into the interstate switched access market"[36]; indeed, the LECs conceded that the variation in overhead assignments "is not due to actual cost differences among individual services, but rather to market conditions."[37] As a result, the Commission was compelled to prescribe overhead loadings for several LECs.[38]

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35 Expanded Interconnection with Local Telephone Facilities, 9 FCC Rcd 5154, 5189-91 (1994).

36 Virtual Collocation Overhead Prescription Order, 10 FCC Rcd at 6380-81 (¶ 11), referencing the Bureau's Virtual Collocation Tariff Suspension Order, at ¶ 22.

37 Virtual Collocation Overhead Prescription Order, 10 FCC Rcd at 6399-6400 (¶ 62), referencing the Virtual Collocation Tariff Suspension Order at ¶ 21.

38 This investigation is ongoing.

A similar example of attention to overhead loadings is contained in the Commission's Open Network Architecture ("ONA") policies, which require the RBOCs to unbundle "basic service elements" ("BSEs"), which are telephone network functions used by affiliated and unaffiliated enhanced service providers. Under the ONA pricing rules, a RBOC is compelled to "load overhead costs onto each of its BSE rates in a manner consistent with the overhead loading methodology used for its other BSEs, or to justify any inconsistencies."[39] This policy was adopted in response to concerns that the RBOCs would allocate discriminatory and disproportionate amounts of overhead into rates for BSEs used by competing enhanced service providers.

Until access charges can be rationalized by pricing at direct cost, the Commission must impose similar constraints on the pricing of switched access, particularly if the RBOCs are permitted to provide long distance services. Currently, non-uniform overhead loadings have an adverse competitive effect by favoring the largest IXCs. At the same time, though, the RBOCs have an incentive to offer discriminatory rates to those carriers only for certain transport services in certain locations. If the RBOCs enter the long distance market, they will have much greater

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[39] Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, FCC 93-532 (released Dec. 15, 1993) at ¶ 51 (approving non-uniform overhead loadings due to mathematical rounding), <u>citing</u> Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4531 (1991) ("ONA/Part 69 Order"), <u>recon</u>., 7 FCC Rcd 5235 (1992), <u>further</u> <u>recon</u>. <u>denied</u>, 10 FCC Rcd 1570 (1994).

incentive to manipulate access pricing, in order to favor their affiliated long distance carriers. Given the flexibility to do so, the RBOCs undoubtedly will use discriminatory pricing to craft "new" transport, switching, and loop offerings designed to advantage their own competitive operations. Consequently, pending access reform, the Commission must require switched access offerings to be priced using uniform, non-discriminatory cost recovery, unless the LEC can document a competitively neutral justification for a different approach.

B. RBOCs Must Not Be Permitted To Discriminate in Favor of Affiliated Long Distance Carriers.

As discussed in Section II.C of these Comments, RBOC entry would exacerbate the detrimental consumer impact of above-cost switched access rates and create additional opportunities for discrimination. Accordingly, rules are needed to assure that any rebalancing or restructuring of access rates, in anticipation of or subsequent to RBOC entry, is competitively neutral.

The Commission has previously confronted similar situations at least twice. In the first case, which arose just after divestiture, AT&T's information service subsidiary (ATTIS) sought permission to resell basic services of AT&T Communications (ATCOM). The Commission recognized the risk that ATCOM would develop offerings uniquely for ATTIS:

> We doubt that any volume discounted offered by ATCOM for which ATTIS is the only customer would meet th[e] standard for a lawful common carrier rate. Similarly, we would be suspicious of, and apply close tariff review to, any

> offering for which one customer (including ATTIS) accounts for a large share of total usage.[40]

To identify such situations, the Commission directed AT&T to comply with certain reporting requirements:

> ATCOM must identify any offering for which use by ATTIS accounts for over 50 percent of total monthly use. For purposes of this requirement, we define "offering" to be a specific volume or configuration of a service, or specific function or option associated with a service, or any other service feature for which there is a rate element or tariff term (e.g., an ordering or termination procedure).[41]

More recently, the Commission imposed similar requirements on the RBOCs in their provision of ONA:

> The chief concern raised by commenters opposing the regulation of ONA services under price caps is the heightened danger of discriminatory pricing of BSEs by RBOCs who will be competing with the customers who purchase BSEs. We agree that ONA services do present an increased danger of unreasonable discrimination, and we feel that the competitive relationship between the RBOCs and ESPs justifies an elevated level of control. To address this concern and help ensure that the RBOCs are not discriminating between BSEs used primarily by the RBOCs and those used primarily by ESP competitors, we will require the RBOCs to "flag" or identify the BSEs that they intend to use

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[40] AT&T: Provision of Basic Services Via Resale by Separate Subsidiary, 98 F.C.C.2d 478, 491 (1984), petition for stay denied, 56 R.R.2d 1355 (1984), recon. denied, 58 FF.2d 1037 (1985), vacated, FCC 87-118 (May 1, 1987).

[41] 98 F.C.C.2d at 493. The Commission also required ATCOM to report the average times for order processing, installation, and maintenance for orders from ATTIS and from unaffiliated entities, on a service-by-service basis. Id. Similar reporting requirements (backed by a stringent non-discrimination obligation and tough penalties for non-compliance) -- as well as detailed structural separation rules and other non-price related safeguards -- will be essential prerequisites to BOC entry into the long distance market, but their development is outside the scope of this proceeding.

> in their enhanced service operations at any time during the period before the BSE is placed under price caps.[42]

In the context of RBOC entry into the long distance market, where the potential economic consequences of discrimination are far more significant than the ATTIS and ONA precedents, similar reporting requirements are essential.

In addition to reporting requirements, meaningful tariff review standards must apply to any new or restructured service, and any otherwise permissible discount, that is intended for use by a RBOC's long distance affiliate. Any such offerings will use the same transport, switching, and local loop facilities utilized to provide access to unaffiliated IXCs. This use of common plant invites discriminatory pricing to favor the affiliated carrier. To prevent such anticompetitive behavior, the Commission must reject any RBOC access offering that burdens other access ratepayers or is effectively unattractive or unavailable to any IXC but the RBOC's own.[43]

Furthermore, any additional pricing flexibility must be carefully circumscribed to prevent discrimination. CompTel's suggestions in this regard are discussed in the next section of

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[42] ONA/Part 69 Order, 6 FCC Rcd at 4532.

[43] See Accunet Packet Service, 58 R.R.2d 846, 858-60 (1985), where the Commission investigated and ultimately rejected an AT&T private line offering that was unattractive to ATTIS' competitors and priced in a way that disproportionately burdened ratepayers for other private line services.

these Comments, which responds to the specific proposals in the Second Further Notice.

IV. THE PRICING FLEXIBILITY PROPOSALS MUST BE SUBSTANTIALLY MODIFIED TO ACHIEVE THE COMMISSION'S OBJECTIVES.

The Second Further Notice raises a series of issues associated with greater LEC pricing flexibility for access services. In most cases, these proposals require significant modification in order to assure that fair competition is preserved and consumers truly benefit.

A. New and Restructured Services.

The Commission seeks comment on whether it should relax regulation of some or all "new" services, exclude alternative pricing plans ("APPs") from treatment as new services, and modify the definition of restructured services.[44] CompTel does not believe any loosening of these rules is warranted.

With respect to new services, there is no basis for concluding that the current requirements are "unreasonable restrictions" or cause "undue delays."[45] Rather, these rules exist for good reason: to assure that new services are not priced below cost and do not discriminate against particular access customers. The need for such oversight is heightened, not reduced, by the emergence of competition for limited portions of dedicated transport, which increases the LECs' incentive to

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44 Second Further Notice at ¶ 53 (Issues 1a, 1b, 1c).

45 Id. at ¶ 44.

engage in anticompetitive conduct.[46] Moreover, the emergence of competition for local services, as discussed in Section II.C of these Comments, will have little impact on switched access competition generally, and therefore cannot justify reduced regulatory oversight of new access services.

CompTel is particularly concerned by the prospect of excluding APPs from the definition of new services. The Commission proposes to define APPs as "self-selected optional discounted rate plans for a service that currently exists."[47] If the RBOCs are permitted to enter the long distance market, APPs likely will be the primary means by which those carriers seek to structure offerings that uniquely benefit their affiliated IXCs. They could, for example, establish term discounts of such duration that only their affiliated long distance carrier would be willing to subscribe. Similarly, they could design discount pricing plans for carriers that interconnect at every end office in a LATA or study area; only their affiliated IXC (and perhaps AT&T) would be likely to do so. Plainly, any such pricing plans must receive strict scrutiny, not cursory review.

With respect to restructured services, the Commission suggests that, "[a]s the competitive circumstances faced by LECs

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[46] Indeed, pending reform of the access charge rules to eliminate overhead from wholesale rates, the rules should be strengthened by requiring the LECs to allocate a reasonable and non-discriminatory amount of overhead to all new services, as discussed in Section III.A of these comments.

[47] Id. at n.50.

increase, unreasonably high restructured rates become less likely, and thus a notice period of less than 45 days would appear to be appropriate." There is no legitimate basis for this conclusion. Where competition for dedicated transport exists, there is a greater risk of unreasonably high restructured rates for common switched transport. Moreover, there is no competitive constraint on unreasonably high rates for other switched access elements, and no such constraint will develop even if local competition thrives. Consequently, the rules applicable to restructured rates should be retained.

B. Alternative Pricing Plans

The Commission seeks comment on whether to allow LECs to file APPs in addition to the volume and term discounts currently permitted. It also inquires whether, if APPs are not generally authorized, it should nonetheless allow additional volume and term discounts for switched access services.[48]

As CompTel explained above, APPs are likely to be a primary means by which the RBOCs will seek to discriminate in favor of their long distance affiliates. Accordingly, the Commission should not allow APPs except under the existing new services test, with additional safeguards applicable if the APP is likely to be used by an affiliated IXC. Specifically, the filing carrier should be required to indicate if the APP is intended for use by an affiliated IXC, and if so, to demonstrate that the APP

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[48] Second Further Notice at ¶ 60 (Issues 2a and 2b).

bears a non-discriminatory overhead loading and is reasonably available to other IXCs. In addition, if the APP is approved by the Commission, the carrier should have to file quarterly reports detailing the relative usage of the APP by affiliated and unaffiliated carriers.[49] Any effective APP that, in practice, is used exclusively by the LEC's long distance affiliate, should be found unreasonably discriminatory.

The Commission also should prohibit volume discounts for switched access services beyond those already allowed. The restrictions on volume discounts imposed in the Switched Transport Expanded Interconnection Order invite rather than deter discrimination, and they cannot reasonably be characterized as imposing undue constraints on LEC pricing flexibility. Moreover, there is no cost justification for offering any volume discounts for shared facilities, and volume discounts accordingly give the largest IXC (and, in the future, LECs that can combine local, access, and interexchange traffic on the same pipe) an unfair competitive advantage.[50]

In the past, CompTel has not objected to giving the LECs flexibility to offer legitimate term discounts even in the absence of access competition. However, if the RBOCs are allowed to provide long distance services, the Commission must recognize

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[49] See Section III.B, supra.

[50] See, e.g., CompTel Petition for Reconsideration, CC Docket No. 91-141 (Transport Phase I), filed Oct. 15, 1993, at 3-6; CompTel Reply, CC Docket No. 91-141 (Transport Phase I), filed Dec. 3, 1993, at 3-7.

that discriminatory term discounts may be a primary tool of pricing access to favor their own interexchange operations. Accordingly, any new term discount must be cost-justified under the new services test, and any such discount that is likely to be utilized by a RBOC's IXC affiliate must meet the additional safeguards discussed above.

C. Individual Case Base Tariffs

The Commission proposes that a LEC seeking to offer a common carrier service (except for special construction) at ICB rates should justify the rates under Section 61.38 of the Rules and show that the service is so unlike any existing service that it has no reasonable basis to develop generally available rates. In addition, the Commission suggests that when a LEC has more than two customers for a common carrier service, or has provided the service for six months or more, the service should be treated as a new service.[51]

These proposals are generally appropriate. They should be strengthened in one important respect, however: LECs should not be permitted to offer ICB rates to their long distance affiliates under any circumstances. Such offerings would raise impermissible opportunities for discrimination.

D. Part 69 Waiver Process

The Commission proposes to allow a price cap LEC to file a petition to establish a rate element for a new switched access

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[51] Second Further Notice at ¶ 65 (Issue 3).

service based on a public interest showing, rather than continuing the current practice of requiring a waiver. The petition would describe the service to be offered and alternative ways in which rate elements might be established. Once a LEC has been permitted to establish the new rate element, other LECs would be allowed to do so upon submission of a certification letter, unless the Bureau objected within 10 days.[52]

Replacement of the Part 69 waiver process with a public interest showing may be an effective means of expediting the introduction of new services without foregoing necessary regulatory oversight. The Commission should specify, however, that the public interest showing should include a statement of whether the LEC has an IXC affiliate that will take the new offering, a description of how the offering will affect demand for other access services, an explanation of why the service cannot be offered under an existing rate element, and a demonstration that the effective rate is the same as the existing rate, adjusted for any difference in underlying costs. Such measures are essential to safeguard against discrimination.

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[52] Second Further Notice at ¶¶ 70-72, 74 (Issue 4). The Commission also proposes to further relax the procedures for rate elements for any new services that would be eligible for "Track 2" treatment. Id. at ¶ 73. Because CompTel does not support reduced regulation of any new services, it likewise opposes additional streamlining of Part 69 procedures for "Track 2" services.

E. Elimination of Lower Service Band

The Commission proposes to eliminate the lower service band limits for all service categories in the traffic sensitive and trunking baskets, reasoning that the current rules may inhibit price reductions because of the burden involved in justifying below-band filings. If this relief is granted, the Commission would set the upper band at five percent above the new lower rate, although it also seeks comment on establishing a one percent upper service band index for any service category or subcategory in which a rates have been reduced pursuant to newly granted pricing flexibility.[53] In support of these proposals, the Commission reasons that "moving prices towards economic costs is a key goal ...."[54]

CompTel certainly favors moving access prices toward economic costs, and recommends means of doing so in Section III of these comments. In addition, CompTel agrees with the principle that additional downward pricing flexibility could result in more efficient pricing. The Commission must recognize, however, that increased flexibility to lower prices heightens the risk of discrimination by permitting exacerbation of uneconomic rate relationships between services in the same basket.

To avoid further exacerbating already unreasonable rate relationships, the Commission must temper any new downward

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[53] Second Further Notice at ¶¶ 83, 105 (Issues 5, 10c).

[54] Id. at ¶ 84.

pricing flexibility with an indexing requirement. That is, if a LEC wishes to lower rates for selected transmission services, it should have to make a corresponding reduction in all transmission services that are provided using the same physical facilities. Allowing a LEC to lower rates for one level of capacity without likewise reducing rates for the others would be inconsistent with the Commission's asserted goal of reducing prices to costs.

In addition, the LECs should not be permitted to reverse rate reductions taken to bring rates more in line with costs, absent a showing that costs have increased. Accordingly, the Commission should establish an upper band of zero for any service category or subcategory in which rates were reduced pursuant to newly granted pricing flexibility. Any subsequent increase should have to be justified as an above-band filing.

F. Revision of Baskets

The Commission asks whether the development of competition requires adjustment to the basket structure, and how that structure might be changed in the future as competition expands. It also inquires whether the elimination of sharing and unbundling of the local loop would obviate the need for multiple baskets.[55] CompTel urges the Commission not to revise the basket structure at this time.

In taking this position, CompTel recognizes that the basket structure in the AT&T price cap plan was predicated largely on

[55] Id. at ¶ 90 (Issue 6).

perceived levels of competition for various services. This structure may make sense in a retail market with dispersed demand, where the service is not a significant component of overall costs faced by consumers. In such a situation, rate decreases for customers of competitive services do not significantly distort competition in downstream markets, even if rates for their competitors are held constant.

The analysis is entirely different in the wholesale switched access market, where the service provided is a major component of total costs faced by providers of retail long distance services. Classifying access services into baskets according to their exposure to competition guarantees that rates in the competitive baskets will continue to decrease, giving larger access customers an artificial, and potentially decisive, cost advantage. The LEC will have no incentive to cut rates in the non-competitive baskets, which contain services used by smaller IXCs. Rather, it will keep those rates high in order to preserve its revenues to the greatest extent possible. This disparity will directly impede long distance competition and harm consumers. In contrast, if functionally equivalent services remain grouped together, and an economically rational indexing mechanism is implemented,[56] then all access customers will benefit from

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[56] See Section IV.E, supra.

competition, even when it is available only for certain services.[57]

G. Consolidation of Service Categories

The Commission seeks comment on whether it should consolidate any service categories or subcategories, and specifically asks for input on a USTA proposal to eliminate the DS3 and DS1 subcategories. In particular, it questions whether such consolidation would harm competition.[58] The answer is plainly yes.

The demand and supply characteristics of DS3 and DS1 services are quite dissimilar. The largest IXCs are by far the predominant customers for DS3 transport services, and these are the services for which competition has most fully developed. While those carriers are also significant customers of DS1 transport, this service is used mostly by smaller IXCs, who have very restricted competitive alternatives. Consequently, placing these services in the same category would enable the LECs to offset decreases in DS3 rates with increases in DS1 rates, even though the ratio between these rates already is unreasonably low.

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[57] Neither the elimination of sharing nor unbundling of the local loop would warrant modification of the baskets. As to sharing, even without an incentive to manipulate the rate of return, placing all LEC services in a single basket would invite rampant cross-subsidization in order to maximize revenues. As to unbundling of the local loop, CompTel demonstrated in Section II.B, supra, that local competition, even if it takes hold, will not produce switched access competition.

[58] Second Further Notice at ¶ 94 (Issue 7).

Moreover, as the Commission concedes, eliminating the price floor and consolidating these subcategories would create additional head room for the LECs to engage in such strategic pricing.

This risk to competition will grow even greater if the RBOCs are permitted to enter the long distance market. By combining local, intraLATA toll, and interLATA traffic, the RBOCs could readily justify the use of DS3 facilities by their long distance affiliates. Consolidation of the DS3 and DS1 subcategories would give the RBOCs nearly unlimited ability to act on this added incentive to discriminate.

Plainly, consolidating the DS3 and DS1 subcategories would distort competition in the access and interexchange markets. To assure that all access rates decline toward cost -- not just those for services used by the RBOCs and AT&T -- the Commission should index the rates for these services, as discussed in Section IV.E above.

H. The Relationship Between Competition and Pricing Flexibility.[59]

The Second Further Notice seeks comment on a series of questions regarding the relation between competition and increased pricing flexibility. As an initial matter, the Commission asks whether relaxed price regulation should be tied to a demonstration that a certain level of competition exists.[60] If so, the Commission suggests that the removal of entry barriers

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[59] Issues 10 through 14.

[60] Second Further Notice at ¶ 103 (Issue 10a).

to local competition may be the most appropriate trigger for additional pricing flexibility.[61] It also inquires whether the relevant product market should be determined by reference to the current price cap service categories,[62] and whether, if competition is shown within a particular density pricing zone, flexibility should be limited to that zone or extended to the entire study area.[63]

As a threshold matter, CompTel reiterates that, for most switched access elements, true price competition is unlikely to develop. Moreover, local competition is not a legitimate surrogate for access competition, rendering the competitive checklist approach irrelevant to pricing flexibility for switched access service. Accordingly, if pricing flexibility for switched access can be implemented in a manner that avoids discrimination and results in rates declining toward cost, it should be adopted without regard to the state of competition. Reducing or eliminating the lower SBI, for example, may be a reasonable step to take even in the absence of competition, as long as it incorporates the indexing and price ceiling mechanisms discussed in Section IV.E, above.

To the extent the Commission believes the degree of access competition should be relevant to pricing flexibility, CompTel

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[61] Id. at ¶ 106.

[62] Id. at ¶ 118.

[63] Id. at ¶ 123.

urges the Commission not to define product markets too narrowly. In particular, the Commission should not allow pricing flexibility for DS3 transport while allowing the LECs to keep rates for DS1 transport artificially high, and should index transmission-related transport rates. Such a plan is not just defensible, but virtually compelled from a network engineering and economic standpoint, because DS3 and DS1 dedicated transport services, as well as transmission-related tandem switched transport offerings, are provided over shared facilities. By adopting an indexing mechanism, the Commission can assure that smaller IXCs share in the price reductions occasioned by competition for high capacity, dedicated transport services.

Finally, because pricing flexibility should result in rates that approach costs, the Commission should permit some degree of geographic disaggregation. As the Commission's zone density pricing policies recognize, transport costs vary with traffic density. To the extent the same is true of other access elements, the LECs should be permitted to adjust their rates accordingly, without regard to the existence of access competition.

I. Streamlined Regulation

The Commission proposes "that a price cap LEC service be permitted streamlined regulation when such service is subject to substantial competition, based on considerations of demand responsiveness, supply responsiveness, market share, and pricing trends."[64] CompTel believes it is premature to determine when LEC access services should be subject to streamlined regulation. Access competition remains highly limited and likely will never extend to many switched access elements. The Commission's limited resources would be far better spent reforming the access charge and price cap rules in a manner that promotes fair long distance competition and benefits consumers, rather than preparing for an eventuality that may be many years down the road.

Should the Commission nonetheless move forward with this proposal, CompTel urges it to acknowledge and accommodate the crucial differences between the retail interexchange market and the wholesale access market. In the interexchange market, there are no buyers with market power and telecommunications accounts for a relatively small percentage of consumers' costs of doing business. In the access market, AT&T retains monopsony power and will continue to do so at least as long as its market share remains greater than all of its competitors combined. Moreover, access is the single largest cost element for every IXC. And, if the RBOCs are allowed to enter the long distance market, the risks of discriminatory access pricing and manipulation of service categories will increase dramatically.

With these considerations in mind, streamlining based on competition for one service would have drastic competitive

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[64] Second Further Notice at ¶ 133 (Issue 15).

consequences. Until all functionally similar services enjoy a similarly substantial degree of competition, streamlining cannot be permitted without seriously injuring long distance consumers.

J. Contract Carriage

The Commission further proposes that LECs be permitted to offer access services that are subject to substantial competition pursuant to contract rates, "provided the contract rates are made generally available to similarly situated customers under substantially similar circumstances."[65] For the reasons discussed immediately above, this proposal is premature and inconsistent with the Commission's intent to avoid competitive harm in the long distance market.[66] Contract pricing must not be allowed unless all functionally similar services are subject to substantial competition. Moreover, no matter what the competitive situation, RBOCs must not be permitted to provide access to their affiliated IXCs pursuant to contract rates. It would take little creativity for the RBOCs to assure that there are no similarly situated customers for the offerings designed for their long distance affiliates.

K. Non-Dominant Status.

The Commission proposes that LECs should be considered non-dominant in any geographic market they enter outside their traditional region, and that they be eligible to be considered

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[65] Second Further Notice at ¶ 148 (Issue 16).

[66] Id. at ¶ 29.

non-dominant for particular services even if they retain market power for other services.[67] It is indisputably premature to consider what conditions would justify non-dominant status. Once again, the Commission must not extend non-dominant treatment to any access service unless the LEC lacks market power with respect to all functionally equivalent offerings.

L. Revisions to AT&T's Price Cap Plan

The Commission asks whether it should treat CLEC and LEC charges the same under the AT&T price cap plan.[68] CompTel assumes this issue is now moot, since the Commission has declared AT&T non-dominant (and therefore not subject to price cap regulation) for its domestic services.[69]

V. CONCLUSION

The Commission's desire to "rely more heavily on market forces to achieve [its] public policy goals" is admirable in concept.[70] In the market at issue, however -- interexchange access, and particularly switched access -- the only force is the incumbent LEC. In practice, therefore, relaxed regulation of access rates will not encourage competition, promote cost-based pricing, or benefit consumers.

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[67] Id. at ¶ 153 (Issue 18).

[68] Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, at ¶¶ 173-174 (Issue 21).

[69] Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier, FCC 95-427 (released October 23, 1995).

[70] Second Further Notice at ¶ 1.

To achieve these worthy objectives, the Commission must reform the access charge and price cap rules concurrently. It must consider the costs of interconnection to the local exchange, the relationship between local competition and access competition, and the likely effect of BOC entry into the interexchange market. It must also target pricing flexibility much more precisely than proposed in the Second Further Notice. CompTel respectfully submits that recommendations presented herein, which are intended to minimize discrimination and promote more efficient pricing, establish a reasonable, carefully balanced approach that will preserve fair competition and benefit consumers.

Respectfully submitted,

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December 11, 1995

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David K. Hall
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April 17, 1995

BY HAND

Mr. Daniel P. Gahagan
Executive Secretary
Maryland Public Service Commission
6 St. Paul Street
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16th Floor
Baltimore, Maryland 21202-6806

Re: MFS Intelenet of Maryland, Inc.
Tariff Md. P.S.C. No. 2

Dear Mr. Gahagan:

On March 22, 1995, MFS Intelenet of Maryland, Inc. ("MFS-I") refiled its Tariff Md. P.S.C. No. 2 for Switched Access Services to other carriers (the "Tariff"). MFS-I's initial co-carrier tariff was unsupported by any cost data and proposed "an approach that is essentially a cap equivalent to Bell Atlantic, Maryland charges." (2/1/95 Trans. at 121). As Chairman Heintz noted, this approach would "in essence reverse" the Commission's decision in Phase I of the MFS-I case that MFS-I's interconnection rate must be cost supported. (Id.)

MFS-I now has filed what it calls "detailed cost support for [the] Carrier Common Line, Local Transport and Local Switching rate elements" of its Tariff. While MFS-I seeks to leave the impression that it has addressed the concerns associated with its initial filing, the same fundamental issues in fact remain unresolved. MFS-I's "cost support" is a transparent effort -- by including fat overheads, inflated rates of depreciation and a misallocation of investments -- to create a "cost" of interconnection higher than BA-Maryland's. MFS-I's "detailed cost support" is simply a cover for the same mirroring proposal that the Commission rejected in February.

MFS-I's interconnection rate should cover the incremental cost of interconnection, plus a reasonable return. **MFS-I's interconnection rate should not be loaded with inappropriate overheads and the costs of providing other services to MFS-I's customers.** Accordingly, this Commission should again require MFS-I to file studies which adequately support its rates.

The Cost Study[1]

For reasons that are entirely unclear, MFS-I has failed to perform an incremental cost study to support its interconnection rate. In fact, MFS-I admits that it "does not believe that the costs developed for purposes of this filing constitute a reasonable or efficient basis for setting prices." (Page 17) MFS-I would put the Commission in the awkward position of approving rates based on cost data that MFS-I admits are irrelevant.

There is little doubt that an incremental cost methodology is appropriate for pricing decisions. The question that MFS-I must answer in order to justify its interconnection rate is "What are the additional costs imposed on MFS-I by other carriers who wish to terminate traffic to MFS-I customers?" Instead of seeking to recover this cost, plus a reasonable return, MFS-I is seeking to shift large measures of its costs for other services to the interconnection rate, with absolutely no justification. For instance:

- The cost study includes the overhead costs of MFS-I. The appropriate incremental cost study would not include such overheads. In addition, the overheads used by MFS-I are significantly higher than typical communications companies, an odd situation for a new and purportedly efficient entrant like MFS-I.

- MFS-I includes what it alleges to be its total investments in its switch, land, buildings and the software used by all services.[2] By including these costs, MFS-I is attempting to recover the costs of providing services other than access – such as Custom Calling Features – through the interconnection rate. These shared fixed costs and the costs of other services are inappropriate for an access incremental cost study and should be excluded.

- Analysis of the definitions MFS-I used to describe the "lineside" and the "trunkside" of its cost study reveal that MFS-I has incorrectly included a portion of its investment in the customer access line in its access

[1] In order to avoid the need for a closed administrative hearing, BA-Maryland has not commented on the proprietary figures in MFS-I's cost study. BA-Maryland is willing to join in a more detailed discussion of MFS-I's cost data should the Commission so desire.

[2] The actual amount of these investments is at present unknown and cannot be found in the MFS-I cost data. Some or all of these investments are or have been made by affiliates of MFS-I, rather than MFS-I itself, and it is unclear how – or even if – MFS-I will compensate its affiliates for the use of these resources.